AGFIRST
FARM CREDIT BANK
1401 Hampton Street | PO Box 1499 | Columbia, SC 29202-1499 | (803) 799-5000

August 22, 2008

VIA EMAIL TO: reg-comm@fca.gov

Gary K. Van Meter, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22101-5090

In Re: Regulatory Burden

Dear Mr. Van Meter:

AgFirst Farm Credit Bank (AgFirst) appreciates the opportunity to submit comments to the agency in response to the notice published in the Federal Register on June 23, 2008, seeking input as to whether existing regulations are inefficient or burdensome. As such, we respectfully ask that you consider the following.

Rate Change Notifications

Our Associations make use of variable rate products tied to widely publicized external indices (Prime or Libor) in an effort to offer commercially competitive interest rates. Section 4.13 (a)(4) of the Farm Credit Act of 1971 requires lenders to notify borrowers of any change in the interest rate applicable to the borrower's loan. We believe that the intent of Congress was to ensure that borrowers were informed of any changes to their interest rate made by the lender (such as an administered District rate). It has been our long-standing position that where the transaction is priced with the use of an external index added to a set margin, no additional disclosure should be required as the lender has not modified the "interest rate". If the lender were to modify the margin points or alter the index to be used, then we believe that such a notification is appropriate.

By requiring System lenders to mail notification of index changes to our customers, we are placed at a competitive disadvantage from a cost standpoint relative to other lenders, who would only send notification of an interest rate change that was the result of a modified margin. In the first six months of 2008, our district cost has been estimated to be $60,547 to print and mail the Prime and Libor index change notices. As time goes on, we anticipate these expenses to grow larger as postage and labor costs increase.

In addition to such notifications increasing the costs of borrowing for our customers, we reiterate that these notices do not provide any more information than is already available to the borrowers by reviewing the Wall Street Journal or any number of financial news websites for the current value of the index. Furthermore, we believe that these notifications of index changes can be confusing to some borrowers. Earlier this year, there were instances where borrowers received rate change notifications within the 45 days as permitted by the regulation that were no

longer accurate as of the date received as the indices experienced multiple changes in a short timeframe.

Responding to Civil Subpoenas

We would request relief from the agency regarding issues related to the production of documents during civil litigation. Frequently, our Associations are served with subpoenas seeking information on a borrower. Under most state rules of civil procedure, the authority to issue a civil subpoena has been transferred down from judges to the attorneys representing the parties in the litigation. In such instances, the attorney is acting as an "officer of the court" and is bound by both ethical obligations and the risk of sanction for failure to act properly.

In many situations, failure to respond to such a subpoena could subject the Association to contempt of court. Presently, Associations must either obtain consent from their customer or retain counsel to object to the subpoena on the grounds that it is not signed by a judge, in accordance with the requirements of 12 CFR 618.8330. This usually results in an appearance in court before a judge who will ultimately quash the objection, sign the subpoena and admonish the Association for failure to comply with the original request.

The current process creates unnecessary burdens of time and expense for the Association, while affording no additional protection to the borrower. If the agency were to permit System institutions to comply with lawfully issued subpoenas signed by counsel, the Association would still have the right to object to any request where it deems such request to be inappropriate or unreasonable. As such, we would request relief by having the agency modify the regulation by striking the last four words, as follows:

> § 618.8330 Production of documents and testimony during litigation.
> …
> (b) If the Government or your bank or association is not a party to litigation, you or your directors, officers, or employees may produce confidential documents or testimony only if a court of competent jurisdiction issues a lawful order ~~signed by a judge~~.

AgFirst again wishes to thank FCA for the opportunity to have our comments heard on these matters and we appreciate the proposed clarification to some of these regulations.

Sincerely,

Frederick T. Mickler, III
General Counsel

CC: F.A. Lowrey, Chief Executive Officer